

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286.

Today's order is undeniably necessary to avoid re-imposing arcane jurisdictional separations rules on a small segment of the communications industry. Indeed, it has been so long—thirteen years—since the rules have been in effect that many carriers no longer have the staff or systems in place to comply with them. Therefore, I support the order.

That said, I question the need to continue the jurisdictional separations rules at all in light of intervening regulatory and marketplace changes. As the order explains, jurisdictional separations is the process by which *incumbent local exchange carriers* apportion *regulated costs* between the *intrastate and interstate jurisdictions*. That description nicely encapsulates why we should give sunseting these rules serious consideration. As consumers increasingly opt for all-distance service from a variety of unregulated competitors in an IP world, the concepts of regulated costs and jurisdictional line drawing no longer make sense. These onerous rules only ever applied to incumbent LECs to begin with, and many of the larger LECs have gotten out from underneath them through a series of forbearance orders, leaving only the smaller LECs on the hook. Furthermore, the *USF/ICC Transformation Order* fundamentally changed how regulated carriers recover their costs, which significantly diminished the relevance of jurisdictional separations for even the small carriers.

Meanwhile, the ever-lengthening freeze has spawned its own share of problems. Carriers that voluntarily agreed to the freeze assuming it would only last for five years have expressed concern that extending it yet again would perpetuate a misallocation of investments and expenses. That is why several parties asked to open a window for affected rate-of-return incumbent LECs to file petitions for waiver to unfreeze their cost category relationships—a request we should have acted upon here.

I would have preferred to take these unnecessary rules off the books rather than prolong a problematic freeze of their application. I hope that the Federal-State Joint Board on Jurisdictional Separations will use this additional three-year window to complete a comprehensive review, with an eye towards ending these rules.